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CRIMINOLOGY AND CRIMINAL JUSTICE IN POST-DEVOLUTION WALES

ABSTRACT

This survey provides one of the first comprehensive reviews of Wales' role in the England and Wales criminal justice system. The article explains that executive devolution has been responsible for a major transformation to Wales' position within the England and Wales jurisdiction. Attention is given to the institutions responsible for criminal justice in post-devolution Wales as well as an overview of some of the key trends and latest data, including recent research which shows that Wales, when disaggregated from England, has the highest rate of imprisonment in Western Europe. In light of the developments that have taken place over the past two decades this survey asserts that Wales must now be taken seriously as a distinct and worthwhile unit of criminological analysis. It is argued that future research on Wales can help to develop a more constitutionally literate criminological debate across the UK as well as European regions affected by devolution.

KEY WORDS

Criminal justice, criminology, devolution, Wales, anglocentricity

Word count:8,717

INTRODUCTION

The recent history of the United Kingdom (UK) has been marked by unprecedented constitutional change. The European Union (EU) referendum in June 2016, and the UK Government's subsequent 'triggering' of the EU withdrawal process, has only added to the existing territorial complexities that devolution has brought to the UK (Minto et al., 2016; McTavish, 2014). Ever since the process of executive devolution to Northern Ireland, Scotland and Wales began in 1999, the asymmetric 'settlements' comprising the UK have been subject to continuous iteration and change. These developments, to name but a few, include the transfer of further powers to Northern Ireland, an independence referendum for Scotland in 2014, two new devolution dispensations for Wales,¹ and the introduction of regional devolution to different metropolitan areas of England.²

The governance arrangements for criminal justice in the UK have been transformed during this period. The re-establishment of the Scottish Parliament in 1999 gave rise to the re-emergence of a "distinctive" Scottish legal and criminal justice system (Mooney et al, 2015:206). Since then, the concepts of 'detartanization' (McAra, 2008) and 'retartanization' (Mooney et al, 2015) have been used to gauge the wavering distinctiveness of the Scottish Government's approach to criminal justice. In Northern Ireland, the transfer of policing and criminal justice powers to Stormont in 2010 has generated interest in the efforts being made to reform a criminal justice system in transition from conflict to peace (e.g. McAlinden and Dwyer, 2015; O'Mahony, 2012).

In Wales, although powers over policing and criminal justice are reserved to the UK Government in Westminster, the handing over of control for social policy to the Welsh Government has drastically altered its position within the England and Wales system (see NOMS et al., 2006; Ministry of Justice, 2017; Silk Commission, 2014; Welsh Government, 2013). Indeed, while the UK Government retains formal responsibility for policing and criminal justice in Wales, "much of the work" being done to support offenders and to reduce crime is now carried out by the devolved government (Ministry of Justice, 2014: 8). It is precisely because of these changes, combined with a lack of criminological research on Wales as well as increasing political interest following a recent review carried out by the

Commission on Justice in Wales,³ that a reappraisal of its current and future position within the discipline is urgently required.

This survey will begin by historically charting Wales' role in the England and Wales jurisdiction before explaining why Wales should now be taken seriously as a distinct unit of criminological analysis. The institutions responsible for criminal justice are then described as well as an overview of some of the key developments and trends including recent research which shows that Wales, when disaggregated from England, has the highest rate of imprisonment in Western Europe. The final section considers the challenges faced by criminologists seeking to overcome the dominance of a Westminster-centric criminology as well as the political debate surrounding the Welsh context. Taken together, the arguments presented in this article provide one of the very first accounts of criminal justice in post-devolution Wales and challenge the assumption that there exists a uniform 'England and Wales' system. In doing so, the paper set outs the trajectory for a criminological research agenda on Wales that can contribute to a more constitutionally literate criminological debate across the UK as well as European regions affected by devolution.

ENGLAND AND WALES: NO DIFFERENCE TO SPEAK OF?

The England and Wales system dates back to the sixteenth century and the passing of the Laws of Wales Acts 1535 and 1542. The aims behind the laws, as stated within the preamble to the 1535 Act, were to legally incorporate Wales into England. By successfully securing Wales' legal and political absorption with England, the Acts were responsible for the near total annihilation of many Wales' own distinct legal and penal "customs" (Rawlings, 2003: 460).⁴ For Wales, the English Kingdom's desire to achieve uniformity meant assimilation with England.

The institutions responsible for the administration of justice in Wales after the Laws of Wales Acts were the Courts of Great Session. These Courts, at least temporarily, allowed Wales to maintain a distinct "legal identity" from that of England (Watkin, 2012: 145). The decision to abolish the Courts of Great Session in 1830, however, were to have devastating consequences for Wales' own legal identity as many of the remaining "vestiges" of a

distinctive Welsh system were swiftly swept away (Rawlings, 2003: 461). In a move driven forward by a shift towards “administrative centralisation” across England and Wales, which included the birth of a state run prison service and the replacement of “traditional methods of dispute settlement” in Wales with a more standardised ‘national’ (c.f. England and Wales) approach (Ireland, 2015: 75), the unitary jurisdiction was finally realised in 1830 as Wales became “fully integrated” with England (Watkin, 2012: 145).

By removing any discernible differences between the two countries,⁵ the creation of the single jurisdiction ensured that Wales could be spoken of through the dominant position of England. The superiority of England, and indeed the subsequent invisibility of Wales, can be clearly traced when looking at the ways in which criminal justice policy and practice in England and Wales has historically been reflected within the discipline of criminology. First, the authority that England holds within the discipline is evidenced when looking at the titles given to studies that have used ‘England’ as shorthand to speak on behalf of both England *and* Wales. This rather extensive list includes work on the ‘English’ prison system (McConville, 1981; Playfair, 1971; Zellick, 1975), ‘English’ penal policy (Hall-Williams, 1970; Rutherford, 1988; Walker and Giller, 1977), the ‘English’ probation system (McWilliams, 1986), the English parole scheme (Hood, 1974), sentencing systems in ‘England’ (Cross and Ashworth, 1981), and ‘English’ policing practices (Emsley, 1991; 2007).

Secondly, even when events that have taken place in Wales are subject to scrutiny, England has rather stubbornly remained the sole unit of analysis. For example, within Scraton et al’s., excoriating *Prisons Under Protest*, attention was drawn to the crisis that had unfolded within “English penal establishments” in 1990 (Scraton et al., 1991: ix), despite clear evidence that prison rioting had also taken place in Wales.⁶ A further example includes Radzinowicz and Hood’s (1986: 404) attempts to discuss “the English” response to political prisoners and members of the Chartist movement between 1839-40. Once again, while the Chartist movement had established itself as a hugely important social movement across industrial south Wales (Jones, 1972), Radzinowicz and Hood (1986: 405) described the threats being posed to “English society” by members of a movement both “dreaming and striving for a better England”.

Thirdly, the authority awarded to England within the discipline has been such that notions of Englishness have been used to help understand the very nature of criminal justice policy in England and Wales. Within historical accounts of policing, for example, the concept of 'English values' has been repeatedly used to explore the emergence of a distinct set of policing practices within the single jurisdiction. According to Finnane (2016: 461), during the early nineteenth century the "sharp oppositions" between policing approaches in England and Wales and those on the continent were clearly marked by a distinct "English resistance" to policy reforms emerging at the time. In 1856, this included the rejection of plans to introduce 'convict supervision' across England and Wales based upon the view that such practices were simply not deemed to be an "English forte" (Radzinowicz and Hood, 1986: 250).

Alongside claims being made to the existence of an "English slant" or "English context" to policing practices in England and Wales (Emsley, 2007: 236-242), the concept of Englishness has also been used to explain the character of penal policy. Throughout Radzinowicz and Hood's (1986) *The Emergence of Penal Policy* the authors explain how a series of "English reactions" had led to the rejection of positivist criminological ideas at the start of the twentieth century. Radzinowicz and Hood (1986: 13) describe a scenario in which "the English" were simply unwilling to engage with positivist criminology and the ideas of Cesare Lombroso that were beginning to sweep across Western Europe. In a further example, the authors describe the rejection of controversial plans unveiled in 1846 to introduce indeterminate sentencing for repeat offenders. In this instance, Radzinowicz and Hood (1986) use extracts taken from an edition of *The Times* in 1850 to reveal how notions of 'Englishness' were yet again the driving force behind the dismissal of any proposed changes to the trajectory of penal policy in England and Wales.

The examples given here reflect the hegemony that anglocentricity has had over the criminological discourse in England and Wales. This discourse has been successful in producing two 'common sense' ways of thinking about the England and Wales system. First, it has produced a 'dominant England'. This 'common sense' view has led to hegemonic characterisations of "English criminal justice" (Rutherford, 1986: 578) as well as an "English criminological tradition" that has shaped criminal justice institutions, policies and practices

in England and Wales (Rutherford, 1988: 136). Second, this discourse is responsible for ensuring that Wales has failed to emerge as a standalone unit of criminological analysis. The legacy of this anglocentric narrative is that, so long as the England and Wales system remains intact, it is deemed perfectly acceptable for criminologists to speak on the behalf of Wales through the dominant position of England. The subheading “for Wales see England” within Rawlings’ (2003: 460) influential work on Welsh devolution provides perhaps the most succinct illustration of how Wales, as a unit of analysis, has been treated as part of the ‘unitary’ system since its creation. Since 1999, however, devolution has been responsible for a radical transformation to Wales’ role within the England and Wales system.

AN END TO THE UNITARY SYSTEM

The first twenty years of Welsh devolution provide a lesson in failed constitution building. Despite numerous commissions, inquiries and reports aimed at providing Wales with a meaningful and lasting dispensation, Wales’ most recent constitutional ‘settlement’, which received Royal Assent in January 2017, has already been described as a “lost opportunity” to do so (Rawlings, 2018: 18). What remains clear, however, is that since 1999 the newly formed democratic institutions in Wales have grown in both capacity and stature as well as holding responsibility for many areas of government.⁷ Although its duties do not formally include policing and criminal justice, the Welsh Government’s control over many areas of social policy, including health, education, housing and social care, has been key to shaping the identity of Welsh devolution for the best part of two decades. These exact same responsibilities have also ensured that the devolved government has had a key role to play in the UK Government’s own attempts to tackle crime and offending.

At the same time that proposals for Welsh devolution were being unveiled by the Welsh Office in 1997 (Welsh Office, 1997), the freshly elected New Labour Government in Westminster introduced plans for a new approach to tackling crime in England and Wales. Elected within an era where Western states were beginning to transform their approaches to governing crime and community safety (Garland, 1996), the New Labour Government immediately embarked on a “relentless quest” to ‘modernise’ state institutions (McLaughlin et al., 2001: 305). At the heart of its agenda was a commitment to delivering ‘joined-up’

partnership approaches as well as integrated working between state, local and community agencies. This strategy was most clearly evidenced during the government's formative years by its approach to youth justice (McLaughlin et al., 2001), as well as the introduction of statutory partnership working through the Crime and Disorder Act 1998 (Gilling, 2007).

A major driving force behind the UK Government's approach was its commitment to reforms at the level of the state itself. Rather than simply responsibilising individuals and agencies beyond government, New Labour's plans emphasised the importance of achieving "horizontal" coordination and collaboration *between* state departments and public sector organisations (Newman, 2001: 106). Underpinned by a declining faith in the capacity of the criminal justice state to act alone in succeeding to prevent crime and offending (Garland, 1996), New Labour's approach ensured that non-criminal justice government departments were also drawn in as part of an "enhanced network" of agencies actively involved in supporting criminal justice institutions to prevent crime and deviance (Garland, 2001: 124; Hughes, 2007).

Of utmost importance for Wales was that the UK Government's approach was to become heavily reliant upon the involvement of non-criminal justice policy actors. In 2002, as part of its very own "blueprint for a cross-government rehabilitation strategy", the UK Government's Social Exclusion Unit (2002: 197) called upon those working within policy areas such as health, housing, and substance misuse to become more actively involved in tackling reoffending across England and Wales. These recommendations were based almost entirely upon the premise that any future reduction in reoffending would largely be determined by the "effectiveness of social policies" rather than those simply conjured up within the sphere of criminal justice (Knepper, 2007: 129).

Symptomatic of the "structural coupling" (Hudson, 1993: 121) between social policy and criminal justice that was to become one of the most "distinctive features" of UK social policy during this period (Rodger, 2008: 3), the "criminalisation of social policy" was also reflected in the ways in which "devolved authorities" were starting to use their social policy controls (Rodger, 2008:3). In Wales, the newly formed Welsh Government immediately set about supporting the UK Government's collaborative approach by unveiling measures designed to

help tackle crime and offending. During the first two terms of the National Assembly for Wales (1999-2007), the Welsh Government⁸ introduced measures relating to substance misuse (Welsh Government, 2000), prisoner housing rights (Shelter, 2004), offender education (Welsh Government, 2007), offender healthcare (Welsh Government, 2005), and community safety (Edwards and Hughes, 2008). Crucially, each of these measures were introduced in spite of the fact that the Welsh Government had no formal responsibilities for policing and criminal justice.

Far from being part of any conscious or deliberate strategy to provide the Welsh Government with any kind of formal responsibility for policing and criminal justice in Wales, the closer ties between social policy and criminal justice have simply meant that responsibilities for tackling crime and offending have, almost inadvertently, been picked up as part of the Welsh Government's existing strategic programme of government. While the England and Wales system remains formally intact, at least in name, the intersection between Welsh devolution and changes in Westminster criminal justice policy has created a situation whereby Wales can no longer be spoken of through the dominant position of England. Rather ironically, the arrangements that now exist in post-devolution Wales are spoken of on the basis of their very difference from those found in England.

WALES AS A DISTINCT UNIT OF ANALYSIS

The Welsh Government's active involvement in the UK Government's 'joined-up' vision heralded a major change in the dynamic of the England and Wales system. Put simply, the effects made by devolution forced the UK Government to recognise that the criminal justice arrangements in Wales are no longer the same as England's. In 2006, a joint report published by the National Offender Management Service (NOMS),⁹ the Welsh Government and the Youth Justice Board aimed to take full account of "the different Welsh perspective" that had emerged since 1999 (NOMS et al., 2006: iii). The strategy acknowledged that the devolved government was in a position to effectively shape offender resettlement services using the "considerable autonomy" it enjoys over policy making within pathway areas central to the UK Government's 'joined-up' approach (NOMS et al., 2006: 7-8).

The UK Government's attempts to recognise the Welsh Government's active involvement have continued since 2006. Following the passage of the Wales Act 2017, the Ministry of Justice established the *Justice in Wales Working Group* to take account of the effects made by Wales' latest dispensation. The *Working Group's* final report concluded that the UK Government should be "mindful" of the distinctive justice arrangements that exist in post-devolution Wales (Ministry of Justice, 2017: 5). A similar response has also come from the Home Office who have identified the need to work alongside the Welsh Government as part of own efforts to counter-extremism (Home Office, 2015), prevent gender violence (Home Office, 2016a), and tackle to hate crime in Wales (Home Office 2016b).

The extent of the divergence between Wales and England has widened as the Welsh Government unveils new laws, policies, and initiatives in Wales. This includes measures to improve offender health and education services (Hitchens et al, 2017; Welsh Government, 2012), community safety (Edwards and Hughes, 2008; Lowe et al., 2015), tackling domestic violence (Welsh Government, 2016), hate crime (Welsh Government, 2014), substance misuse (Welsh Government, 2008a), and modern slavery (Welsh Government, 2017). Steps have also recently been taken by the devolved government to work alongside HM Prison and Probation Service in Wales (HMPPS in Wales) to improve youth justice services (Welsh Government & Ministry of Justice, 2019a) and to support female offenders in Wales (Welsh Government & Ministry of Justice, 2019b).

The widening divergence between Wales and England clearly signifies that a major fault line now exists in the very foundations of the once 'unitary' system. The scale and extent of these changes mean that criminologists can no longer simply approach policing and criminal justice in Wales through an 'England and Wales' lens. Any approach that continues do so will fail to understand or capture the complexity now present within a system which sees two different governments, each with its own democratic mandate, policy vision and priorities operating alongside one another in the same policy space.

A DE FACTO WELSH SYSTEM: INSTITUTIONS AND TRENDS

Behind the formal reservation of powers, the Welsh Government's activity has led to some quite fundamental changes to the institutional architecture of the criminal justice system in Wales. To reflect the 'different Welsh perspective' the UK Government has established a number of Welsh directorates with "senior leadership" roles to help take account of the Welsh dimension to its policing and criminal justice activities in Wales (Ministry of Justice, 2017: 4). Welsh criminal justice institutions include HM Prison and Probation Service in Wales, Youth Justice Board Cymru, HM Courts and Tribunals Service Cymru-Wales, Crown Prosecution Service Wales, and a Home Office Team in Wales. A number of Welsh-only policies, strategies and forums have since been developed to enhance partnership approaches between devolved and non-devolved agencies (e.g. Integrated Offender Management Cymru, 2014) and to take account of widening divergence between UK and Welsh Government policy. Although disaggregated 'Welsh-only' criminal justice data can be difficult to access (Jones, 2018; 2019a, 2019b), the emergence of a set of de facto Welsh institutions have helped to place greater emphasis on who is responsible as well as the latest developments and trends.

Police, convictions and court closures

There are four police forces covering each of the territorial policing areas in Wales: Dyfed-Powys, Gwent, North Wales, and South Wales. Policing in Wales is also carried out by a range of other agencies including British Transport Police, Civil Nuclear Constabulary, the National Crime Agency and the Ministry of Defence. Police Community Support Officers (PCSOs), introduced by the Police Reform Act 2002, have played a central role in the Welsh Government's own efforts to promote and improve community safety in Wales. Since the Home Office announced cuts to PCSO funding in 2011, the Welsh Government has provided additional funding for PCSOs to the four forces (Lowe et al, 2015). While the number of PCSOs in England has fallen by 43% since 2010, the numbers in Wales have increased by more than a quarter (28%) during the same period (Home Office, 2019a).

Although Wales' devolution dispensation prevents the National Assembly from legislating on matters reserved to the UK Parliament, the National Assembly has the power to introduce new offences within areas of devolved competence. In January 2020, the Welsh Assembly passed a law to remove the common law defence of reasonable chastisement and prohibit the use of physical punishment against children.¹⁰ Already widely referred to as the introduction of a 'smacking ban' in Wales, the legislation will ensure that Welsh police forces are responsible for enforcing a different criminal measure in Wales than forces operating in England.

Criminal cases in Wales are prosecuted by the Crown Prosecution Service (CPS). The CPS is led by the Director of Public Prosecutions having been established as an independent body under the Prosecution of Offences Act 1985. CPS Cymru-Wales is designated as one of the 13 distinct CPS areas with its own Chief Crown Prosecutor who is responsible for prosecutions maintaining professional standards; and contributing to national policy and strategy. The proportion of criminal cases resulting in a conviction in Wales has increased since 2013 and has been consistently higher than the rate recorded at courts in England during this period (Jones, 2019b).

All criminal cases in Wales are heard at the Magistrates' and Crown Court.¹¹ Since 2010, twenty-four Crown and Magistrates' Courts have closed leading to growing concerns over access to justice and the considerable "hardship and stress" facing court users who are now expected to travel long distances to reach alternative court settings (Newman, 2019: 4). To address these problems the Commission on Justice in Wales (2019) called for an end to the UK Government's court closure plan and recommended the development of a strategy to improve court settings and access to justice in Wales.

Prisons, immediate custody and community sentences

There are five male prisons in Wales that each hold a mixture of convicted, unconvicted, sentenced and unsentenced prisoners (see Figure 1). HMP Berwyn, HMP Cardiff, HMP Swansea and HMP Usk & Prescoed are operated and run by HMPPS in Wales. HMP Parc in Bridgend is Wales' only private prison and is currently operated by G4S Care and Justice Ltd.

Wales' newest prison, HMP Berwyn in north Wales, opened in February 2017. With a certified normal accommodation of 2,106 prisoners, HMP Berwyn is the largest prison in England and Wales and the second largest in Western Europe (Jones, 2018).

Figure 1 – The prison estate in Wales

Repeated concerns have been raised in recent years over the “rapid deterioration” of prison safety across Wales and England (House of Commons Justice Committee, 2016: 3). Since 2016 a record number of self-inflicted deaths, prisoner-on-prisoner assaults, self-harm incidents, and assaults on prison staff have been recorded at Welsh prisons. The number of drug finds, alcohol discoveries and prison disturbances in the Welsh prison estate have also reached record levels (Jones, 2019b). In the most recent round of prison inspections, HMI Prisons reported that just 36% of its previous recommendations on prison safety in Wales had been achieved in full.

More than a third (37%) of all Welsh prisoners were being held in English prisons in 2018. On average, prisoners from Wales were being held in 105 different prisons in England at any one time.¹² The distances from home facing many Welsh prisoners can often prevent them from receiving visits from family members and from outside resettlement services (e.g. Cochran et al, 2015; Hudson, 2007; Jones, 2017). Research into the experiences of Welsh prisoners has shown that they can often face a distinct set ‘pains of imprisonment’ when held in prisons in England. These include being subjected to derogatory stereotypes as well as negative attitudes towards the use of the Welsh language (Jones, 2017; Hughes and Madoc-Jones, 2005).

Figure 2 – Prison population rates per 100,000 in England and Wales using home address, 2013 to 2018

The single jurisdiction of England and Wales has recorded the highest average imprisonment rate in Western Europe since 1999 (Jones, 2019a). On a disaggregated level, however, Ministry of Justice data reveal that Wales has recorded a higher rate of imprisonment than England in each year since 2013 (see Figure 2) (Jones, 2019b). This is despite the fact that police recorded crime has been lower in Wales in every year throughout this period (Jones, 2019a).¹³ One possible explanation for this trend is that the average custody rate at the Magistrates' and Crown Court in Wales was higher than in England during this period (Jones, 2019b). A decline in the number of community sentences handed out in Wales is also believed to have contributed to Wales' high rate of imprisonment (NAW Debate, 22 January 2019).¹⁴

The responsibility for those sentenced to community supervision falls to HMPPS in Wales. In response to widespread criticism and growing concerns about the performance of Community Rehabilitation Companies since 2015 (HMI Probation, 2019; National Audit Office, 2019), the Ministry of Justice announced plans in 2018 to reform the structure of probation services in Wales and England. Its proposals included specific plans for Wales to reflect the Welsh Government's responsibilities and the "fundamentally different delivery landscape" that exists in post-devolution Wales (Ministry of Justice, 2018: 36). The UK Government's plan to 'renationalise' probation services was rolled out across Wales in December 2019 but will not take effect in England until 2021.

'Dragonised' Youth Justice

Despite falling under the Ministerial responsibilities of the UK Justice Secretary, many of the services for young people in contact with the youth justice system in Wales fall under the auspices of the devolved government and its responsibilities for education, training, and local government. The Welsh Government's commitment to a 'children first, offender second' philosophy has led to characterisations of a divergent approach to youth justice in Wales (Drakeford, 2009). Indeed, for more than a decade the concept of 'dragonisation' has been used to describe a seemingly "distinctively Welsh" approach to the one being taken in England (Haines, 2010: 233; Haines and Case, 2015).

The number of Welsh children in the secure estate has fallen dramatically over the last decade.¹⁵ This decline can largely be attributed to an 80% reduction in the number of immediate custodial sentences handed to under 18s in Wales. In 2016, UK Government proposals to build 'secure schools' for children across Wales were vetoed by the Welsh Government's Welsh Cabinet Secretary for Communities and Children who declared that that it would seek to find "Welsh solutions" to the problems facing young people in the secure estate in Wales instead (NAW Debate, 14 December 2016).¹⁶ The Welsh Government and HMPPS in Wales launched a joint strategy in May 2019 to help further reduce the number of Welsh children entering the criminal justice system (Welsh Government & Ministry of Justice, 2019). The plans include a commitment to invest in preventative services as well as pre-court diversion for children in Wales.

Although the availability of some 'Welsh-only' justice data has helped to provide a clearer understanding of the Welsh context to policing, prisons and youth justice in recent years, further empirical research is required to develop this further. This should include studies to explain Wales' high rate of imprisonment and the effects made by recent changes to the structure of Welsh probation services. Criminologists should also look to explore any intra-national differences in crime, the impact made by legislative changes in Wales to UK criminal justice agencies, and revisit the theory of dragonisation. These topics should form part of a much wider research agenda that will be opened up as criminologists begin to take Wales

more seriously and strive towards the development of a more constitutionally literate form of analysis.

STUDYING WELSH CRIMINAL JUSTICE: TOWARDS A CONSTITUTIONALLY LITERATE CRIMINOLOGY

But for a handful of small-scale studies on youth justice (e.g. Drakeford, 2010; Haines, 2010), few attempts have been made to engage on a serious level with policing and criminal justice in Wales. While the impacts made by Welsh devolution are reflected in the working practices and research agendas of academics within a number of separate disciplines including law (e.g. Nason, 2017), politics (e.g. Wyn Jones and Scully, 2012), and public policy (e.g. Chaney, 2015), criminology remains something of an exception. The result of which is that Wales largely continues to be subsumed within criminological analyses and debates played out on an England and Wales level.

Accepting that the changes made to Wales' position have received very little attention, there are a number of possible explanations for the existing lacuna. First, criminology's shortcomings are consistent with the theory that Welsh universities fail to take Wales and the study of Welsh society seriously. As argued by Wyn Jones (2004: 2) more than a decade ago, "if one looks at the research produced by Wales' universities, one is stuck by how little work is done on Wales within our educational institutions".¹⁷ Despite some activity in this area, including the development of the Welsh Centre for Crime and Social Justice to bring criminologists in Wales closer together, criminology in Wales has yet to come to terms with the effects made by devolution.

The rise of market liberalism within higher education may also help us to understand the hegemony of a Westminster-centric criminology in Wales. In an income generation era where Welsh universities are so heavily reliant upon high scores in the Research Excellence Framework to secure future funding¹⁸, research agendas focused on 'local' matters may appear somewhat at odds with a wider institutional focus upon 'internationally' relevant or 'world leading' research (Jones, 2013; Wyn Jones, 2004). In this context, criminologists are increasingly likely to be deterred by the prospect of studying Wales for fear that a focus on

“parochial Welsh affairs” will prevent them from being able to compete on an international stage (Wyn Jones, 2004: 14). The result of which is that an anglocentric approach to criminological research in Wales remains unchallenged.

Welsh criminology departments are also failing to reflect the Welsh context in the delivery of their taught programmes. There are currently six universities¹⁹ in Wales that offer undergraduate or postgraduate criminology programmes, not one of which, perhaps unsurprisingly given the paucity of research, offers any module explicitly dealing with Wales. This is in stark contrast to the efforts that have been made by legal scholars. At Cardiff University’s School of Law and Politics, for example, the undergraduate LLB Law programme offers students the chance to undertake a module on ‘Welsh Devolution’ while its postgraduate LLM in Governance and Devolution provides students the opportunity to undertake modules in ‘Constitutionalism and Governance’ and ‘The Law of Devolution in Wales’.

The anglocentric curriculum may also reflect the marketing and recruitment strategies adopted by Welsh universities who rely heavily upon applications from prospective students outside of Wales. In 2019, for example, 96% of all applications to study a combined social sciences degree from UK domiciled students were from prospective students living outside of Wales (UCAS, 2019).²⁰ Given the huge financial rewards that flow from student tuition and support grants,²¹ Welsh criminology departments appear reluctant to fully embrace the Welsh context. A similar set of concerns have been raised by legal scholars who fear that Welsh law schools will be “less attractive” to non-Welsh students in the event that a separate legal qualification is created in Wales (e.g. National Assembly’s Constitutional and Legislative Affairs Committee, 2012: 54).

The lack of attention directed towards the Welsh context since 1999 can also be explained by the fact that policing and criminal justice have rarely featured within Welsh political debates. Even when the subject finally made its way on to the political agenda as part of the *One Wales* Coalition Government’s commitment to “consider the evidence” for the future devolution of criminal justice powers in 2007, the issue was almost immediately sidelined

amidst concerns over the “substantial financial implications” associated with justice devolution (Welsh Government, 2008b:27).

The UK Government’s determination to protect the integrity of the England and Wales system has also contributed.²² Despite acknowledging that a distinct set of arrangements exist in post-devolution Wales (e.g. NOMS et al, 2006; Ministry of Justice, 2014), the UK Government has done little to stimulate any kind of discussion around justice in Wales. This includes the fact that, despite repeated calls to make Welsh-only justice data more freely available (House of Commons Welsh Affairs Committee, 2019; Jones, 2018), large amounts of disaggregated criminal justice data can still only be accessed using the Freedom of Information Act 2000. The difficulties that academics, politicians and even Welsh Government officials face in trying to access often quite basic information, including data on Welsh prisoner numbers, means that many of the issues and trends outlined in this article are likely to remain undetected.

In recent years, however, increasing political attention has been directed towards policing and criminal justice in Wales. It was the Silk Commission’s inquiry in 2014 that was to prove a major turning point. Its bold recommendations in relation to areas that, until then, had rarely featured in debates on Welsh devolution, including prisons, probation, courts and policing, was a significant moment for debate on criminal justice. Controversial UK Government plans to expand the Welsh prison estate (BBC News, 2017), as well as court closures (Newman, 2019), failed probation reforms (HMIP, 2019), funding cuts to legal aid (BBC News, 2018a), and a new devolution dispensation for Wales (Rawlings, 2018), have all since contributed to the emerging political debate.

Arguably the most significant development to date, however, was the Welsh Government’s decision to order a review into the arrangements of criminal justice in post-devolution Wales in 2017. Under the Chairship of the former Lord Chief Justice of England and Wales, Lord Thomas of Cwmgiedd, the Commission on Justice in Wales received evidence from over 200 separate organisations, agencies and individuals. At the launch of the Commission’s report in October 2019, Lord Thomas described the existing arrangements as “logically indefensible” as he unveiled the Commission’s recommendations for full legislative

devolution of policing and criminal justice powers to the National Assembly). The Commission (2019) also called for an increase in the age of criminal responsibility, the establishment of problem-solving courts in Wales, and a reduction in the prison population with particular emphasis on driving down the number of women in prison.

The Commission on Justice in Wales' recommendations, alongside the arguments set out in this paper, further underline that Wales is now a distinct, important and worthwhile unit of criminological analysis. Indeed, wider recognition of Wales' emergence presents an opportunity for criminologists to develop an entire research agenda. While this includes research to take account of the impacts of devolution on the ostensibly non-devolved system in Wales, criminologists should also look to contribute to debates on the future of criminal justice powers in Wales as well as the nature and trajectory of future Welsh policy.

Beyond the developments taking place in place in Wales, criminologists can also contribute to a more constitutionally literate debate across the UK. This includes helping to challenge the orthodoxy of 'British criminology'; an orthodoxy that persists despite the obvious differences that pertain in Scotland (Mooney et al, 2015) Northern Ireland (McAlinden and Dwyer, 2015; O'Mahony, 2012) as well as those in England in the wake of its own programme of regional devolution. Outside of the UK, sub-state systems in Europe present further opportunities for comparative research on criminal justice and devolution. This includes developments in Germany where the responsibility for policing and prison administration are devolved to the Lander (Oberwittler and Hofer, 2005), the autonomous community of Catalonia (Blay and Larrauri, 2015; Franquero and Saiz, 2015), and the Flemish region of Belgium whose government appointed a designated minister for justice in October 2019 (Bradshaw, 2019). Taken together, these developments can help to ensure that criminology is better placed to engage more seriously with the effects made by constitutional change. An impact that includes the emergence of a unique and distinct criminological space in Wales.

CONCLUSION

This survey has shown that Wales' involvement in the England and Wales criminal justice system has radically altered since devolution began in 1999. Having been subsumed within

an anglocentric discourse that has remained dominant for the best part of two hundred years, this article has explained how a significant set of changes has led to Wales' emergence as a distinct and worthwhile unit of criminological analysis. While the Welsh context has been acknowledged by the UK Government and has led to some quite radical changes to the institutional architecture of the Welsh criminal justice system, Wales' place within the discipline of criminology remains largely unchanged. This survey outlines the case for an entire research agenda on policing and criminal justice in Wales that can help criminologists overcome the hegemony of an anglocentric criminological gaze as well as contribute to political debates and deliberations over Wales' future role within the England and Wales system. More broadly, empirical research on criminal justice in Wales can help to kickstart a more constitutionally literate criminological debate across the UK and those parts of Europe affected by devolution.

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¹ And a referendum granting primary law making powers in March 2011.

² Most notably Greater Manchester and London.

³ This is discussed further in the final section.

⁴ English replaced Welsh to become the language of the law after the passing of the Acts (Ireland, 2015).

⁵ Legal and social historians have quite rightfully pointed out that a number of differences remained in Wales throughout this period (see Ireland, 2015; Jones, 1991).

⁶ This was clearly outlined within Lord Woolf's report into the disturbances in 1991 which described a series of incidents at HMP Cardiff on 8 April 1990, including clashes which caused extensive damage to the prison and left five staff members and one prisoner injured (Woolf, 1991).

⁷ The National Assembly was handed responsibility for 18 areas of government after the Government of Wales Act 1998, 20 areas following the Government of Wales Act 2006, and 21 areas after tax powers were devolved to the National Assembly for Wales in 2014. For more on the history and development of Welsh devolution see Wyn Jones and Scully (2012).

⁸ Throughout this period there were changes from 'National Assembly for Wales' to 'Welsh Assembly Government'. In 2011 this would change to 'Welsh Government' which is used here to avoid confusion.

⁹ NOMS was renamed HM Prison and Prison Service (HMPPS) in 2017.

¹⁰ Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill.

¹¹ Wales has six Crown Courts and fourteen Magistrates' Courts which are operated by HM Courts and Tribunals Service Wales.

¹² Because there are no women's prisons or category A facilities in Wales, all female prisoners and category A prisoners are held at establishments in England.

¹³ The average rate of offences in Wales was 65.4 compared to 71.7 offences in England (Home Office, 2019b)

¹⁴ The number of community sentences in Wales fell from 7,274 in 2015 to 5,995 in 2018 (Jones, 2019b).

¹⁵ In October 2019, there were just 27 Welsh children in prison compared to 160 a decade earlier.

¹⁶ There are currently two custodial establishments for children in Wales – Hillside Secure Children's Home in Neath and HMYOI Parc in Bridgend. Hillside Secure Children's Home provides accommodation for children aged 12 to 17. The Young Persons' Unit at HMYOI Parc is a facility managed by G4S on the same site as HMP Parc in Bridgend. The Unit holds boys under the age of 18 and has a Certified Normal Accommodation of 64.

¹⁷ There are some exceptions to this theory within other disciplines (e.g. Chaney, 2015; Rawlings, 2018; Wyn Jones and Scully, 2012).

¹⁸ And previously the Research Assessment Exercise.

¹⁹ The Open University also offers criminology programmes to students in Wales.

²⁰ 4 out of 5 applicants were domiciled in England.

²¹ In 2017/18, more than half (51%) of Cardiff University's total income came from 'Tuition fees and support grants'. This figure was 72% at the University of South Wales.

²² The Ministry of Justice has repeatedly outlined the benefits associated with Wales' continuing involvement in the single jurisdiction (Wales Office, 2013).